

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 12, 2000

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke
Deputy Clerk: D. E. Moore

D032396 People v. Ho
D034453 In re Ho on Habeas Corpus

Causes called on merits. Janice R. Mazur, Esq. argued for appellant. Felicity Senoski, Deputy Attorney General argued for respondent. Ms. Mazur replied for appellant. Cause submitted as to appeal only, D032396.

Court recessed at 9:27 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Terry O'Rourke

D032652 In re Tommy P., a Juvenile

Cause called on merits. Frieda Jo Molnar, Esq. argued for appellant. Crystal Bradley, Deputy Attorney General argued for respondent. Ms. Molnar replied for appellant. Cause submitted.

D033421 Ching v. Cham

Cause called on merits. Dale A. Hilmen, Esq. argued for appellant. John Addams, Esq. argued for respondent. Mr. Hilmen replied for appellant. Cause submitted.

D033353 Chavez v. Becton Dickinson and Company

Cause called on merits. Gayle M. Blatt, Esq. argued for appellant. Robert A. Atkins, Esq. argued for respondent, Becton Dickinson and Company. Ms. Blatt replied for appellant. Cause submitted.

Court recessed at 10:40 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Terry O'Rourke
Deputy Clerk: D. E. Moore

D033627 Reese v. Stewart

Cause called on merits. Janis L. Turner, Esq. argued for appellant. F. Beard Hobbs, Esq. argued for respondent. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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June 12, 2000 (Continued)

D033949 Schroeder v. Hull & Company

Cause called on merits. Patrick D. Webb, Esq. argued for appellant. Steven R. Parminter, Esq. argued for respondent. Mr. Webb replied for appellant. Cause submitted.

D033249 Griffiths v. Mercy Hospital

Cause called on merits. Robert H. Lynn, Esq. argued for appellant. DeAnn M. Salcido, Esq. was present in oral argument for appellant, but did not argue. Darin L. Wessel, Esq. argued for amicus curiae, Tom Homann Law Association. Loren G. Freestone, Esq. argued for respondent, Mercy Hospital. Mr. Lynn replied for appellant. Cause submitted.

D033832 Mission Beach Preservation Committee v. City of San Diego

Cause called on merits. J. Michael McDade, Esq. argued for appellant. Leslie A. Fitzgerald, Esq. argued for respondent. Mr. McDade replied for appellant. Cause submitted.

Court recessed at 3:20 p.m. until Tuesday, June 13, 2000 at 9 a.m.

D032188 Lobaito et al. v. Childress Concrete, Inc.

The petition for rehearing is denied.

D031388 Bradshaw v. Price/Costco, Inc.

The judgment is affirmed. Costs are awarded to Price/Costco. McIntyre, J.;
We Concur: Work, Acting P.J., Benke, J.

D032067 People v. Hernandez

The judgment is affirmed. McIntyre, J.; We Concur: Work, Acting P.J., Benke, J.

D034046 People v. Herrera

The judgment is affirmed. Huffman, J.; We Concur: Work, Acting P.J., McIntyre, J.

D034136 People v. Brown

The judgment is affirmed. Huffman, J.; We Concur: Work, Acting P.J., Benke, J.

D033342 A. O. Reed & Co., Inc. et al. v. County of San Diego et al.

The opinion filed May 16, 2000, is modified. No change in judgment.

D033861 People v. Clayton

Judgment affirmed. Kremer, P.J.; We Concur: Haller, J., O'Rourke, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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June 12, 2000 (Continued)

D035131 In re Thompson on Habeas Corpus

The petition is denied.

D034719 In re Vean B., a Juvenile

Judgment affirmed. Work, Acting P.J.; We Concur: Huffman, J., Haller, J.

D034667 People v. Savercool, III

Judgment affirmed. Kremer, P.J.; We Concur: Work, J., Huffman, J.

D034821

In re Frankie L. a Juvenile

The pending petition for writ of habeas corpus, In re Daniel C. et al., D035538 is consolidated with the pending consolidated appeal, In re Frankie L., D034821, for disposition.

D034821 In re Frankie L., a Juvenile

D034765 In re Frankie L., a Juvenile

D035538 In re Daniel C. et al. on Habeas Corpus

(Consolidated) The order placing Frankie in foster care is reversed with directions that the juvenile court immediately initiate and process a transition to Daniel and Ernestine's home. The order terminating Carmen's parental rights and selecting adoption as Frankie's permanent plan is affirmed. The petition is dismissed as moot. Work, Acting P.J.;

We Concur: Haller, J., O'Rourke, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE

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D035704 Baumer v. San Diego County Superior Court/People

The petition is denied.

D033094 Morgan et al. v. Dadian

The judgment in favor of Dadian is reversed. The order on Dadians's special motion to strike the second amended complaint under section 425.16 is vacated. The court is directed to enter a new order granting the motion as to the second cause of action and denying the motion as to the third, fourth and sixth causes of action. The parties shall bear their own costs on appeal.

Work, Acting P.J.; We Concur: Benke, J., Haller, J.

D033432 People v. Pettigrew

The judgment is affirmed. Nares, J.; We Concur: Kremer, P.J., McDonald, J.

D030706 Berger v. Kung et al.

The petition for rehearing is denied.

D033640 Pacific Bell v. City of San Diego

The judgment is reversed. Respondent shall bear the costs of appeal. CERTIFIED FOR PUBLICATION. McDonald, J.; We Concur: Huffman, Acting P.J., Haller, J.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald
Deputy Clerk: D. E. Moore

D032817 Fraley v. Allstate Insurance Company

Cause called on merits. Harris I. Steinberg, Esq. argued for appellant. Charles A. Bird, Esq. argued for respondent. Mr. Steinberg replied for appellant. Cause submitted.

Court recessed at 9:35 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald

D034723 Jiminez v. Superior Court/T. M. Cobb Company

Matter called on merits. Stuart M. Eppsteiner, Esq. argued for petitioner. Bill Sullivan, Esq. argued for real party in interest, T. M. Cobb Company. Jeff G. Harmeyer, Esq. argued for real party in interest, Viking Industries. Mr. Eppsteiner replied for petitioner. Matter submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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June 13, 2000 (Continued)

Court recessed at 10:20 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Terry O'Rourke

D032039 People v. Castaneda

D034563 In re Castaneda on Habeas Corpus

Causes called on merits. Nicholas De Pento, Esq. argued for appellant. Rhonda Cartwright-Ladendorf, Deputy Attorney General argued for respondent. Cause submitted as to appeal only, D032029.

D033366 Horowitz v. La Costa Resort & Spa Corporation

Cause called on merits. Stuart L. Tolchin, Esq. argued for appellant. Paul Kissel, Esq. argued for respondent. Mr. Tolchin replied for appellant. Cause submitted.

D033858 Settimo Associates v. Manufacturer's Life Insurance Company

Cause called on merits. Jacob Slania, Esq. argued for appellant. Michael M. Hogan, Esq. argued for respondent. Mr. Slania replied for appellant. Cause submitted.

Court recessed at 11:20 a.m. until 1:30 p.m.

D033068 People v. Meranian, III

The judgment is affirmed. Haller, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D035268 In re Barnett on Habeas Corpus

The sentence is vacated and the case remanded to the superior court for resentencing. The trial court is directed to strike the serious/violent felony prior and to impose such sentence as it finds appropriate under the circumstances. This opinion is final as to this court five calendar days after filing. (Cal. Rules of Court, rule 24(d).) McIntyre, J.; We Concur: Work, Acting P.J., Haller, J.

D033409 People v. Zolezzi

The petition for rehearing is denied.

D034155 Bagley et al. v. Cannon et al.

The judgment is affirmed. The Bagleys are awarded their costs of appeal. McIntyre, J.; We Concur: Work, Acting P.J., Benke, J.

Court reconvened at 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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June 13, 2000 (Continued)

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Terry O'Rourke
Deputy Clerk: D. E. Moore

D031460 Kaufman and Broad of San Diego v. Westlake Construction

Cause called on merits. Bruce Lorber, Esq. argued for appellant/cross-respondent. Timothy D. Lucas, Esq. argued for respondent/cross-appellant, Sam Coutts. Mr. Lorber replied. Cause submitted.

Court recessed at 2:08 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre

D027357) People v. Lynch

D028895) People v. Lynch

D033626 In re Lynch on Habeas Corpus

Causes called on merits. Allen R. Bloom, Esq. argued for appellant. Ilana Cohen, Deputy Attorney General argued for respondent. Mr. Bloom replied for appellant. Cause submitted as to consolidated cases only.

D033784 Rogers v. State of California, Department of Motor Vehicles

Cause called on merits. Martin Hagan, Deputy Attorney General argued for appellant. Stephen Thomas Crandall, Esq. argued for respondent. Mr. Hagan replied for appellant. Cause submitted.

D033759 Hendrix v. Vargas

Cause called on merits. Marvin Douglas Hendrix, argued for appellant in pro per. Francis M. Devaney, Deputy City Attorney argued for respondent. Mr. Hendrix replied. Cause submitted.

Court recessed at 3:24 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, The Honorable Associate Justice Judith Haller and Assigned Judge Robert May

D027490 Paxton v. Giarratano

Cause called on merits. Clairce J. Letizia, Esq. argued for appellant. Curtis Cole, Esq. argued for respondent, Linda Stewart. Charles Bird, Esq. argued for respondent, Mercy Hospital. Doug Reynolds, Esq. argued for respondent, Giarratano. Ms. Letizia replied. Cause submitted.

Court recessed at 4:50 p.m. until Wednesday, June 14, 2000 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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June 13, 2000 (Continued)

D035575 Bravo v. The Superior Court of San Diego County/Ismaj et al.
The petition is denied.

D035455 In re D'Apice on Habeas Corpus
The petition is denied.

D035456 In re Kulka on Habeas Corpus
The petition is denied.

D035779 In re Cecilia G., a Juvenile
The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE

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D033421 Ching v. Cham, as Trustee of the Larissa Cham Family Trust

The judgment is affirmed. Huffman, J.; We Concur: Benke, Acting P.J., O'Rourke, J.

Court convened at 9:00 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Richard Huffman

Deputy Clerk: D. E. Moore

D031336) Mycogen Plant Science v. Monsanto Company

D031046) Mycogen Corporation v. Monsanto Company

D032171 Mycogen Plant Science v. Monsanto Company

Cause called on merits. Ellis Horowitz, Esq. argued for appellant. Kenneth S. Klein, Esq. argued for respondent. Mr. Horowitz replied for appellant. Mr. Klein replied for respondent. Cause submitted.

Court recessed at 10:35 a.m. until 1:30 p.m.

D032817 Fraley et al., v. Allstate Insurance Company

The judgment is affirmed. Nares, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D035780 Jones v. Superior Court of San Diego County/Henderson

The petition is denied.

D35453 In re Hunter on Habeas Corpus

The petition is denied.

D032861 People v. Moran

The record does not reflect any action by the trial court regarding the prison priors. Those prior convictions must be stricken in light of the trial court's sentencing decision. The trial court's purported decisions to stay any terms for the enhancements under sections 12022.7, subdivision (a) and 667, subdivision (a)(1) are likewise defective. The bodily injury enhancement was stricken on motion of the prosecution and there is no basis for the imposition of the serious felony priors under section 667, subdivision (a)(1) as there is not current conviction for a serious felony offense. (See section 1192.7, subd. (c); (People v. Braz (1998) 65 Cal.App.4th 425.) Accordingly the trial court is directed to strike all enhancement allegations under sections 12022.7, subdivision (a); 667, subdivision (a)(1) and 667.5, subdivision (b). The trial court is further directed to modify the abstract of judgment accordingly and forward an amended abstract to the Department of Corrections. In all other respects the judgment is affirmed. Huffman, J.; We Concur: Work, Acting P.J., O'Rourke, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE

June 14, 2000 (Continued)

D035151 In re Mitchell on Habeas Corpus

The opinion filed May 31, 2000 is modified. No change in judgment. The opinion is ordered certified for publication.

D031167 Antorietto v. Atkinson

D032174 Antorietto v. Regents of the University of California

The judgments are reversed and the matter is remanded with directions that the superior court overrule the defendants' demurrers to Antorietto's complaint and order the defendants to answer. The defendants may raise the issue of whether Antorietto has exhausted any applicable administrative remedy, or the other defenses they may have against Antorietto's claims, by a motion for summary judgment or summary adjudication. Antorietto is awarded his costs of appeal. McIntyre, J.; We Concur: Benke, Acting P.J., Huffman, J.

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald

Deputy Clerk: D. E. Moore

D033505 People v. Graham

Cause called on merits. Keith H. Rutman, Esq. argued for appellant. Larissa Hendren, Deputy Attorney General argued for respondent. Cause submitted.

D034286 Tackett v. Imperial County Retirement Board

Cause called on merits. Everett L. Bobbitt, Esq. argued for appellant. Carolyn Anne Hudson, Esq. argued for respondent. Mr. Bobbitt replied for appellant. Cause submitted.

Court recessed at 2 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

D034006 Rochette v. Dynamex Courier

Cause called on merits. Craig Gross, Esq. argued for appellant. Eugene P. Kenny, Esq. argued for respondent. Mr. Gross replied for appellant. Cause submitted.

D033458 Haragos v. Dykstra

Cause called on merits. David S. Bright, Esq. argued for appellant. Scott Patterson, Esq. argued for respondent. Richard Dykstra argued for respondent in pro per. Mr. Bright replied for appellant. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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June 14, 2000 (Continued)

Court recessed at 2:46 p.m. until Thursday, June 15, 2000 at 9 a.m.

D033115 In re Hawkes Family Trust

The judgment is affirmed. Costs are awarded to respondent. Respondent's motion for sanctions is denied. McIntyre, J.; We Concur: Work, Acting P.J., Benke, J.

D034306 Creative Capital Leasing Group, et al. v. Goonetilleke

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal Rules of Court, rule 19(b)). Each party to bear own costs on appeal.

D035457 In re Eggleston on Habeas Corpus

The petition is denied.

D035797 Panther et al. v. The Superior Court of San Diego County/Gross et al.

The petition is denied.

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D035454 In re Sheppard on Habeas Corpus

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

Deputy Clerk: D. E. Moore

D032879 Hyatt v. Cycle Parts West, Inc.

Cause called on merits. Edward J. Horowitz, Esq. argued for appellant. Darin Wessel, Esq. argued for respondent. Mr. Horowitz replied for appellant. Cause submitted.

Court recessed at 9:35 a.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre

D031561 Bank of America v. Moyes

Cause called on merits. Andrew F. Lloyd, Esq. argued for appellant. Philip A. Magen, Esq. argued for respondent. Mr. Lloyd replied for appellant. Cause submitted.

D033606 Pickford Realty v. Styvaert

Cause called on merits. Robert Hitchcock Hayes, Esq. argued for appellant. Michael B. McDonnell, Esq. argued for respondent. Mr. Hayes replied for appellant. Cause submitted.

D033250 Manley v. Pro-Tect Professional Security Services, Inc.

Cause called on merits. No appearance by James S. Goodman, Esq., counsel for appellant. Miles D. Scully, Esq. was present in oral argument for respondent and submitted on the briefs. Cause submitted.

Court recessed at 10:22 a.m. until 1:30 p.m.

D034497 In re FRANK L., a Juvenile

The opinion filed on May 25, 2000, is ordered certified for publication.

D035763 Rischman v. San Diego County Superior Court/Renna, et al.

The petition for writ of mandate has been read and considered by Presiding Justice Kremer and Associate Justices Benke and O'Rourke. The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 15, 2000 (Continued)

D035763 People v. Dixon

The notice of appeal filed on May 26, 2000 was directed to the Appellate Department of the Superior Court and was filed in this court in error. The notice of appeal is transferred to San Diego Superior Court.

D034546 Filarski v. Crowley

Upon written stipulation filed by appellant Carol Filarski and respondents Scripps Memorial Hospital and Ronald Rothenberg, the appeal is dismissed as to the Scripps Memorial Hospital and Ronald Rothenberg only. Each party to bear own costs on appeal.

D029149 Consolidated Electrical Distributors Inc. v. Chevron U.S.A. Inc.

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 19(b)). Each party to bear own costs on appeal.

**D034016 Billings v. Christensen
George C., a Minor, etc. v. Coe et al.**

Affirmed. Haller, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D032336 People v. Clarke

The conviction of assault by means of force likely to produce great bodily injury (section 245, subd. (a)(1)) is reversed and remanded to the trial court for a new trial with these directions: If the People do not bring Clarke to trial within 60 days after the filing of the remittitur in the superior court, the court shall dismiss the count pursuant to section 1382, subdivision (a)(2), resentence Clarke on the corporal injury to a cohabitant count, and modify the abstract of judgment accordingly. The superior court shall send the modified abstract of judgment to the Department of Corrections. In all other respects, the judgment is affirmed. Haller, J.; I Concur: Huffman, Acting P.J.; I Concur: McDonald, J. (Opinion)

D033171 Teyssier v. City of San Diego

D033622 City of San Diego v. McCarty

(Consolidated) The judgments are affirmed. The City shall have costs. CERTIFIED FOR PUBLICATION. Work, Acting P.J.; We Concur: Benke, J., McDonald, J.

D030076 Weis v. Mauro

D030268 Weis v. State of California et al.

(Consolidated) The appeal of the judgment in favor of the individual defendants, excluding Mauro, is dismissed for lack of jurisdiction. The judgments in favor of DAA, DFA and Mauro are affirmed. Work, Acting P.J.; We Concur: Haller, J., McDonald, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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June 15, 2000 (Continued)

D034286 Tackett et al. v. Imperial County Retirement Board et al.

We affirm the judgment. Respondents are entitled to costs on appeal. McDonald, J.;

We Concur: Kremer, P.J., Nares, J.

D031414 Carden et al. v. County of San Diego et al.

The judgments for Muchin and as to County are reversed and the trial court is directed to reinstate the first amended complaint and to award costs to plaintiffs. The judgment for Clarkson, Martin and Wolfe are affirmed and each of those parties are to recover costs from plaintiffs. Plaintiffs shall recover costs from County and Muchin. Work, Acting P.J.;

We Concur: Benke, J., Haller, J.

D035427 In re Smith on Habeas Corpus

The petition is denied.

Court convened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

Deputy Clerk: D. E. Moore

D032883 People v. Tigar and Eastman

Cause called on merits. Russell S. Babcock, Esq. argued for appellant, Tigar. Matthew Mulford, Deputy Attorney General argued for respondent. R. Clayton Seaman replied for appellant, Eastman. Mr. Babcock replied for appellant, Tigar. Cause submitted.

Court recessed at 2:11 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

D031826 Paredes v. Fuller Ford, Inc.

Cause called on merits. Karl R. Lindegren, Esq. argued for appellant/cross-respondent. Nathan Low, Esq. argued for respondent/cross-appellant. Mr. Lindegren replied. Cause to be submitted at a later date.

Court recessed at 2:55 p.m. until Friday, June 16, 2000 at 9:00 a.m.

D034236 People v. Mitchell

The petition for rehearing is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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June 16, 2000

D031767 People v. Brown

Judgment affirmed. Work, J.; We Concur: Kremer, P.J., Huffman, J.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald
Deputy Clerk: D. E. Moore

D032886 People v. Williams

Cause called on merits. Gary R. Nichols, Esq. argued for appellant. Susan Miller, Deputy Attorney General argued for respondent. Cause submitted.

D033140 People v. Greene

Cause called on merits. Janice R. Mazur, Esq. argued for appellant. Melissa Mandel, Deputy Attorney General argued for respondent. Ms. Mazur replied for appellant. Cause submitted.

Court adjourned at 9:40 a.m.

D033609 People v. Graham

The conviction is affirmed. The sentence is reversed and the matter is remanded for determination whether it would be in the interest of justice to strike the great bodily injury enhancement. O'Rourke, J.; We Concur: Kremer, P.J., Work, J.

D033505 People v. Graham, Jr.

The judgment is affirmed. Nares, J.; We Concur: Kremer, P.J., McDonald, J.

D032879 Hyatt et al. v. Cycle Parts West, Inc.

The judgment is affirmed. Respondent is entitled to costs on appeal. McDonald, J.; We Concur: Nares, Acting P.J., McIntyre, J.